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SAN JOSE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLICATION OF
OLEGS FILS,

MISC. CASE NO.

NC

Applicant,

CV-20 80176 MISC

For Order Authorizing Discovery For
Use In Foreign Proceedings Under 28
U.S.C. § 1782

**EX PARTE APPLICATION FOR
THE ISSUANCE OF SUBPOENAS
DUCES TECUM PURSUANT TO
28 U.S.C. § 1782 TO SPECIALIZED
HELICOPTERS, INC., HYATT
CORPORATION, HYATT
CARMEL HIGHLANDS ALSO
KNOWN AS HIGHLANDS INN,
INC., BURST + BLOOM,
SOMMPICKS LLC, BENCHMARK
WINE GROUP, INC., AND
BELMONT WINE EXCHANGE,
LLC**

[Filed Concurrently with Declaration of
Oleg Fils, Declaration of Agris Bitans,
Declaration of Joseph R. Ashby, and
[Proposed] Order]

By Fax

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MEMORANDUM OF POINTS AND AUTHORITIES

Applicant Olegs Fils, by his counsel, hereby submits this memorandum of law in support of *ex parte* application for the issuance of subpoenas duces tecum pursuant to 28 U.S.C. § 1782 to Specialized Helicopters, Inc., the Hyatt Corporation, the Hyatt Carmel Highlands also known as Highlands Inn, Inc., Burst + Bloom, SommPicks, LLC, Benchmark Wine Group, Inc., and Belmont Wine Exchange, LLC (the “Application”), for the purpose of obtaining discovery from Specialized Helicopters, Inc., the Hyatt Corporation, the Hyatt Carmel Highlands/Highlands Inn Inc., Burst + Bloom, SommPicks, LLC, Benchmark Wine Group, Inc., and Belmont Wine Exchange, LLC (collectively the “Merchants”) in connection with proceedings currently before a court in Latvia (Case No.C30657918) (the “Latvian Proceedings”).¹ Mr. Fils’s proposed Rule 45 subpoenas (the “Subpoenas”) to Specialized Helicopters, Hyatt, the Hyatt Carmel Highlands/Highlands Inn, Inc., Burst + Bloom, SommPicks, Benchmark Wine Group, and Belmont Wine Exchange are attached to the concurrently filed declaration of Joseph R. Ashby as Exhibits 11 through 17, respectively.

JURISDICTION AND VENUE

Jurisdiction is proper pursuant to 28 U.S.C. § 1782 as this Application is for discovery involving persons that are found and documents located within the Northern District of California, and the discovery is relevant and important to assist applicant in his foreign court proceedings. Venue in the Northern District of California is appropriate pursuant to 28 U.S.C. § 1782 because the discovery is being sought from corporations and persons residing or found in this judicial district. This matter is properly assigned to the San Jose Division because a substantial part of the events to

¹ Mr. Fils requests this Order *ex parte*, as is routine in Section 1782 applications. *In re Republic of Ecuador*, No. C-10-80225, 2010 WL 3702427, at *2 (N.D. Cal. Sept. 15, 2010) (“[I]t is common for ‘the process of presenting the request to a court and to obtain the order authorizing discovery’ to be conducted *ex parte*.”). As such, it is widely recognized that Section 1782 applications are properly handled *ex parte*, and the fact that Mr. Fils brings a Section 1782 application is “typically justified” and “no substantial rights of the subpoenaed person are implicated by such action.” See *id.*

1 which the Subpoenas related are believed to have occurred in the County of Monterey. L.R. 3-1(c),
 2 (e).

3 PRELIMINARY STATEMENT

4 The purpose of 28 U.S.C. § 1782 is to assist foreign courts and litigants in situations exactly
 5 like this one. The documents requested by the Subpoenas are critical to the Latvian Proceedings, yet
 6 will be difficult if not impossible for the Latvian court to reach. Consistent with the liberal discovery
 7 provided under the Federal Rules, the standard to issue a subpoena under § 1782 is low, especially
 8 when the recipient of the subpoena is not a party to the foreign proceeding.
 9

10 Section 1782 authorizes a federal district court to order discovery of documents and
 11 testimony for use in a foreign proceeding from any person who resides or is found in the court's
 12 district:
 13

14 The district court of the district in which a person resides or is found may order him
 15 to give his testimony or statement or to produce a document or other thing for use in
 16 a proceeding in a foreign or international tribunal, including criminal investigations
 17 conducted before formal accusation. The order may be made ... upon the application
 18 of any interested person and may direct that the testimony or statement be given, or
 19 the document or other thing be produced, before a person appointed by the court. 28
 20 U.S.C. § 1782(a).

21 A successful application must meet three requirements: (1) the person(s) from whom
 22 discovery is sought must reside or be "found" in the district of the court issuing the discovery order;
 23 (2) the discovery must be "for use in" a proceeding before a foreign or international tribunal; and
 24 (3) the applicant must be an "interested person." 28 U.S.C. § 1782(a); *see Intel Corp. v. Advanced*
 25 *Micro Devices, Inc.*, 542 U.S. 241, 256-59 (2004) (discussing the statutory prerequisites); *In re*
 26 *Google Inc.*, No. 14-MC-80333-DMR, 2014 WL 7146994, at *2 (N.D. Cal. Dec. 15, 2014). Because
 27 all three requirements are met here, this application should be granted.
 28

Specifically, Specialized Helicopters is located in Watsonville, California and provided
 flight services to Ms. Santa Bernahl (previously – Ms. Zamuele) ("Ms. Bernahl"), Mr. Fils's former

1 wife, and, upon information and belief, to her then-lover, now husband, Mr. David Bernahl, in
2 August 2017. (Declaration of Olegs Fils ("Fils Decl.") ¶ 10 & Ex. E.) By virtue of its location in
3 Watsonville, California, Specialized Helicopters is located in this district. (See Decl. of Joseph R.
4 Ashby ("Ashby Decl.") ¶ 2 & Ex. 1.). On information and belief, it possesses documents and
5 information concerning the circumstances of infidelity committed by Ms. Bernahl.
6

7 The Hyatt Carmel Highlands in Carmel, California, where Ms. Bernahl incurred charges in
8 September and December 2017, is a Hyatt-branded hotel, such that Hyatt Corporation is located in
9 the district. (Ashby Decl. ¶ 3 & Ex. 2.) The Hyatt Carmel Highlands also believed to be known as
10 Highlands Inn, Inc. does business in Carmel, California operates at the location, and so the entity
11 that operates as Hyatt Carmel Highlands also believed to be known as Highlands Inn, Inc. is located
12 in the district. (Ashby Decl. ¶ 4 & Ex. 2.) On information and belief, Ms. Bernahl and Mr. Bernahl
13 stayed as guests at this exclusive, seaside resort in September and December 2017. (See Fils Decl.
14 ¶ 10 & Ex. E.)
15

16 Burst + Bloom is a flower shop in Carmel-by-the-Sea, California (Ashby Decl. ¶ 5 & Ex. 3),
17 where Ms. Bernahl made a purchase in August 2017 just days after the charges by Specialized
18 Helicopters. (Fils Decl. 11 & Ex. E.) By virtue of the flower shop's location in Carmel-by-the-Sea,
19 California, Burst + Bloom is located in this District. (Ashby Decl. ¶ 5 & Ex. 3). Upon information
20 and belief, it possesses documents and information concerning the circumstances of infidelity
21 committed by Ms. Bernahl.
22

23 SommPicks is an alcoholic beverage retailer licensed in the state of California offering
24 members "difficult to source" selections of wine and beer. (Ashby Decl. ¶ 6 & Exs. 4, 5.)
25 Ms. Bernahl made a purchase at SommPicks in November 2017. (Fils Decl. ¶ 12 Ex. E.) By virtue
26 of its location in Daly City, California, SommPicks is located in this District. (Ashby Decl. ¶ 6 &
27
28

1 Ex. 6.) On information and belief, SommPicks possesses documents and information concerning
2 the circumstances of infidelity committed by Ms. Bernahl.

3 Benchmark Wine Group is an online wine retailer (Ashby Decl. ¶ 7 & Ex. 7), from which
4 Ms. Bernahl purchased in February 2018. (Fils Decl. ¶ 12 & Ex. E.) By virtue of its location in
5 Napa, California, Benchmark Wine Group is located in this District. (Ashby Decl. ¶ 7 & Ex. 8.) On
6 information and belief, Benchmark Wine Group possesses documents and information concerning
7 the circumstances of infidelity committed by Ms. Bernahl.

8
9 Belmont Wine Exchange stores and sells fine wines. (Ashby Decl. ¶ 8 & Ex. 9.) Ms. Bernahl
10 made two purchases from Belmont Wine Exchange in February 2018. (Fils Decl. ¶ 12 & Ex. E.).
11 By virtue of its location in Hayward, California, Belmont Wine Exchange is located in this District.
12 (Ashby Decl. ¶ 8 & Ex. 10.) Upon information and belief, Belmont Wine Exchange possesses
13 documents and information concerning the circumstances of infidelity committed by Ms. Bernahl.

14
15 Mr. Fils is an “interested person” because he is a party to the Latvian Proceedings (the
16 claimant), and his counsel in Latvia intends to use the documents obtained from the Merchants in
17 the Latvian Proceedings. (Fils Dec. ¶¶ 2, 16; Declaration of Agris Bitans (“Bitans Decl.”) ¶¶ 11–
18 13.) Upon information and belief, the Merchants possess documents that will assist in demonstrating
19 that Ms. Bernahl was unfaithful to Mr. Fils in at least August, September, November, and December
20 2017, and also in February 2018, while the parties were still married, thus justifying the cancellation
21 of the various gift agreements that are at the heart of the Latvian Proceedings. (*See id.*)

22
23 In addition, the four discretionary factors analyzed by courts when considering § 1782
24 applications—the so-called “*Intel* factors”—all support an order authorizing the Subpoenas seeking
25 discovery from the Merchants. *See Intel*, 542 U.S. at 264.

STATEMENT OF FACTS

Mr. Fils and Ms. Bernahl married on October 1, 2016. (Fils Decl. ¶ 3.) In early 2018, Ms. Bernahl told Mr. Fils she wanted a divorce. (*Id.*) The couple divorced on March 29, 2018 upon Ms. Bernahl's initiative. (*Id.*) During their marriage, Mr. Fils gifted to Ms. Bernahl numerous valuable belongings and funds valued at several million *Euros*. (*Id.*) These gifts, which are the subject of various gift agreements, included, but were not limited to, the following: Harry Winston engagement ring (valued at 199 600,00 EUR); Tiffany & Co jewelry set consisting of earrings and a necklace (valued at 18 000,00 EUR); Harry Winston Chandelier Cluster earrings (valued at 88 400,00 EUR); Rolex watch (valued at 9 600,00 EUR); a Porsche Macan (valued at 67 760,00 EUR); a Porsche Turbo (valued at 133 100,00 EUR); IWC Da Vinci Automatic Moon Phase 36 alligator watch (valued at 15 400,00 EUR); and 3 600 000,00 EUR in cash. (*Id.*)

After the couple divorced in March 2018, Mr. Fils discovered that Ms. Bernahl had been in an extra-marital relationship with Mr. Bernahl. (Fils Decl. ¶ 4.) Mr. Fils discovered posts from private social media accounts in which Mr. and Ms. Bernahl are seen exchanging loving words with each other and are seen embracing and kissing while posing for pictures in New York and elsewhere, dating back to at least August 2017, during the time Mr. Fils and Ms. Bernahl were still married. (Fils Decl. ¶¶ 4, 5 & Exs. A, B, C.)

Upon belief, during her extra-marital affair with Mr. Bernahl, Mr. and Ms. Bernahl were passengers aboard a helicopter provided by Specialized Helicopters in August 2017 and were guests of the Hyatt Carmel Highlands in September and December 2017. In addition, Ms. Bernahl ordered fine alcoholic beverages from SommPicks, Benchmark Wine Group, and Belmont Wine Exchange, as well as flowers from Burst + Bloom, which are believed to have been delivered to Mr. Bernahl's residence in California as gifts.

1 Mr. and Mrs. Bernahl married in July 2018—just months after Mr. Fils and Ms. Bernahl’s
2 divorce was finalized and Mr. Fils learned of the affair. (*Id.* ¶ 15.) The couple resides together in
3 California. (*Id.*)

4 In light of these circumstances, Mr. Fils has sought to recover the sentimental items and a
5 portion of the funds he gifted to Ms. Bernahl, valued at approximately €2.4 million that are the
6 subject of the various gift agreements, in the Latvian Proceedings. (Bitans Decl. ¶ 8; Fils Decl. ¶ 16.)
7 The legal basis of the claim in Latvia is gross ingratitude of Ms. Bernahl towards her then-spouse,
8 Mr. Fils, as well as her sole role in the breakdown of the couple’s marriage. (*See* Bitans Decl. ¶ 8;
9 Fils Decl. 16.)

11 Upon information and belief, around the time of the divorce, Ms. Bernahl covertly carried
12 out several transactions to dispose of or transfer *de facto* all her valuable assets, aiming to
13 circumvent any claims to those assets Mr. Fils might have post-divorce. (*See* Fils Decl. ¶ 16.) Some
14 funds were transferred to foreign accounts, but most of the assets were formally transferred to, or
15 encumbered on behalf of Ms. Bernahl’s family members. (*Id.* ¶ 8) Mr. Fils has therefore also brought
16 claims to declare these transactions fraudulent and void within the Latvian Proceedings. (*Id.*)

18 It should be noted that the Latvian court has already found that Ms. Bernahl acted in bad
19 faith because she provided misleading information to the Latvian court and concealed her assets,
20 including some of the property and funds Mr. Fils gifted her. (Bitans Decl. ¶ 9.) The Latvian court
21 has therefore repeatedly sustained Mr. Fils’ applications to secure his claim by seizing movable
22 property, real estate, and cash belonging to, as well as payments due to, the defendants in the Latvian
23 Proceedings.² (*Id.*)

25
26 ² Under Articles 137(1) and 140(1) of the Latvian Civil Procedure Law, the court may secure a
27 claim provided, *inter alia*, there are reasonable grounds to believe that enforcement of the court
28 judgment otherwise may become problematic or impossible (in this case— mostly due to
concealment of assets, towards which the claim could be enforced), and that *prima facie* the claim
has legal basis. (Bitans Decl. ¶ 9).

1 Evidence of Ms. Bernahl's infidelity is displayed throughout social media and dates back to
2 August 2017. For example, Mr. Bernahl posted a photo on his Instagram social media profile
3 @dbernahl, where he is pictured embracing Ms. Bernahl at a Manhattan helipad with a Zip Aviation
4 helicopter in the background. (See Fils Decl. ¶ 4 & Ex. A.) On information and belief, this photo
5 was taken in August 2017, based in part on the construction progress of the New York skyscrapers
6 in the background of the picture. (*Id.*) Therefore, upon information and belief, Mr. and Ms. Bernahl
7 were romantically involved at least in August 2017, when they vacationed together in the U.S. and
8 indulged in such luxuries as private helicopter rides.

10 During the final months of 2017, it is believed that Ms. Bernahl spent most, if not all, of that
11 time in the company of her lover, Mr. Bernahl, in California, where he lived at the time and where
12 the couple, now married, now lives. For example, on December 8, 2017, Mr. Bernahl posted a
13 picture on his private Instagram social media profile @dbernahl, where Mr. and Ms. Bernahl can be
14 seen embracing in a loving gesture. (See Fils Decl. ¶ 5 & Ex. B.) Mr. Bernahl has captioned the
15 picture with the text "Luckiest guy in the world... (continued)". (*Id.*) It is also noteworthy that
16 Ms. Bernahl "liked" this picture through her account @santazamuele, thus expressing that she
17 shares Mr. Bernahl's romantic sentiment towards her. (Fils Decl. Ex. B.) On January 16, 2018,
18 Mr. Bernahl posted another picture, where the couple can be seen in a similar pose, captioned
19 "Moments #❤️" (also "liked" by Ms. Bernahl). (See Fils Decl. ¶ 5 & Ex. C.).

22 On January 26, 2018, Mr. Bernahl posted a picture with Ms. Bernahl's children, which is
23 geotagged as having been taken in Big Sur, California. (See Fils Decl. ¶ 6 & Ex. D; Britan Decl. ¶ 4
24 & Ex. D.) This and other evidence (all of which Mr. Fils came to know only after his divorce with
25 Ms. Bernahl) suggests Mr. and Ms. Bernahl spent time in California back in December 2017 as a
26 couple.

Mr. Fils seeks discovery from the Merchants during this timeframe to aid in the Latvian Proceedings, because, upon information and belief, the Merchants possess documents and information concerning the infidelity committed by Ms. Bernahl and her then-lover, Mr. Bernahl, as well as gross ingratitude towards Mr. Fils. Ms. Bernahl's credit card statement reflects the following charges by the Merchants in August, September, November, and December 2017 and February 2018:³

Date	Merchant	Amount
August 18, 2017	Specialized Helicopters	2 820,80 EUR
August 19, 2017	Specialized Helicopters	2 820,80 EUR
August 24, 2017	Burst + Bloom	594,96 EUR
September 20, 2017	Hyatt Highland Inn Giftshop	839,18 EUR
November 9, 2017	SommPicks LLC	5 631,83 EUR
December 25, 2017	Hyatt Highland Inn Giftshop	4 172,81 EUR
February 1, 2018	Benchmark Wine Group, Inc.	2 455,03 EUR
February 2, 2018	Belmont Wine Exchange, LLC	1 282,15 EUR
February 2, 2018	Belmont Wine Exchange, LLC	2 511,47 EUR

(Fils Decl. Ex. E; Bitans Decl. Ex. E.)

Ms. Bernahl paid her credit card bill with funds gifted to her by Mr. Fils during their marriage. (Fils Decl. ¶ 13.)

During the time spent together, Ms. Bernahl also provided direct financial assistance to her lover, using funds accumulated in her bank account that were mostly comprised of the cash Mr. Fils had gifted to her. As evidenced by her bank account statements, on December 13, 2017 Ms. Bernahl

³ Incidentally, Mr. Bernahl posted a photo on his Instagram social media profile @dbernahl, where he is pictured embracing Ms. Bernahl at a Manhattan helipad. (Fils Decl. ¶ 3 & Ex. A.). On information and belief, this photo was taken in August 2017, based in part on the construction progress of the New York skyscrapers in the background of the picture. (*Id.*) Therefore, on information and belief, the couple carried on this extra-marital affair since at least August 2017.

1 issued a “short term loan” of \$8,000 to Mr. Bernahl. (Fils Decl. ¶ 14 & Ex. F.)

2 Through the Subpoenas, Mr. Fils seeks documents and information showing that Mr. and
3 Ms. Bernahl stayed and the Hyatt Carmel Highlands and used Specialized Helicopters’ services
4 together while Ms. Bernahl was still married to Mr. Fils—namely that Ms. Bernahl spent money
5 gifted to her by her spouse, Mr. Fils, to cover expenses while on vacation with her then-lover and
6 currently husband.

7
8 All of these Merchants offer services in this District, where Mr. Bernahl resided at the time
9 the charges were made, and where Mr. and Ms. Bernahl now reside together (on Eastfield Court in
10 Carmel by the Sea). (See Fils Decl. ¶¶ 9, 15.) Numerous of Ms. Bernahl’s credit card charges are by
11 businesses in and near Carmel, California, which indicates that Ms. Bernahl may have stayed in
12 Mr. Bernahl’s home town for many weeks while still married to Mr. Fils (in August and November
13 2017, and February 2018). (Fils Decl. ¶¶ 10-12 & Ex. E.)

14
15 Considering the nature of Mr. and Ms. Bernahl’s relationship, it is believed that Ms. Bernahl
16 made the flower and wine purchases from the respective Merchants to be delivered to Mr. Bernahl’s
17 residence. (See Fils Decl. ¶ 20.). For example, the charge by Burst + Bloom was made after Ms.
18 Bernahl had just arrived back in Riga, Latvia after ending her visit to Carmel-by-the-Sea. (Fils Decl.
19 ¶ 11.)⁴

20 Through the Subpoenas, Mr. Fils seeks documents and information showing that Mr. and
21 Ms. Bernahl used Specialized Helicopters’ services together while Ms. Bernahl was still married to
22 Mr. Fils—namely that Ms. Bernahl spent money gifted to her by her spouse, Mr. Fils, to cover
23 expenses while on vacation with her then-lover. Mr. Fils also seeks documents and information
24

25
26 ⁴ Further, during time spent together in December 2017, Ms. Bernahl also provided direct financial
27 assistance to her lover, using funds accumulated in her bank account that was mostly comprised of
28 the cash Mr. Fils had gifted to her. As evidenced by her bank account statements, on December 13,
2017 Ms. Bernahl issued a “short term loan” of \$8,000 to Mr. Bernahl. (Fils Decl. ¶ 14 & Ex. F.).

1 showing that Ms. Bernahl made an extravagant floral purchase to be sent to Mr. Bernahl's home, as
 2 well as multiple purchases of fine alcohol to be gifted to Mr. Bernahl, all while she was still married
 3 to Mr. Fils.

4 Counsel for Mr. Fils in Latvia intends to use the documents obtained from the Merchants in
 5 the Latvian Proceedings to demonstrate that Ms. Bernahl was unfaithful to Mr. Fils in at least August
 6 2017, November 2017, and February 2018, thus demonstrating both gross ingratitude towards
 7 Mr. Fils and promoting the breakdown of their marriage, which justifies cancellation of the gift
 8 agreements. (*See* Bitans Decl. ¶¶ 10-19.)

10 ARGUMENT

11 Section 1782(a) provides, in relevant part, that: [t]he district court of the district in which a
 12 person resides or is found may order him to give his testimony or statement or to produce a document
 13 or other thing for use in a proceeding in a foreign or international tribunal The order may be
 14 made ... upon the application of any interested person To the extent that the order does not
 15 prescribe otherwise, the testimony or statement shall be taken, and the document or other thing
 16 produced, in accordance with the Federal Rules of Civil Procedure. 28 U.S.C. § 1782 (2013). The
 17 highly-relevant and narrowly-tailored discovery sought by Mr. Fils is precisely the sort of discovery
 18 contemplated by 28 U.S.C. § 1782. Section 1782 "is the product of congressional efforts, over the
 19 span of nearly 150 years, to provide federal-court assistance in gathering evidence for use in foreign
 20 tribunals." *Intel*, 542 U.S. at 247. A court has wide discretion in granting a Section 1782 application.
 21 *See In re Gianasso*, No. 12-MC-80029, 2012 WL 651647, at *2 (N.D. Cal. Feb. 28, 2012). It does
 22 so with an eye toward the "twin aims of [Section] 1782: "providing efficient assistance to
 23 participants in international litigation, and encouraging foreign countries by example to provide
 24 similar assistance to our courts." *Palantir Techs., Inc. v. Abramowitz*, 415 F. Supp. 3d 907, 912
 25
 26
 27
 28

1 (N.D. Cal. 2019), appeal dismissed sub nom. *In re Palantir Techs., Inc.*, No. 20-15073, 2020 WL
2 3988000 (9th Cir. June 22, 2020).

3 With those aims in mind, the Court must first determine whether the applicant satisfies three
4 threshold requirements: (1) the person from whom discovery is sought must reside or be found in
5 the jurisdiction of the district court to which the application is made; (2) the discovery must be “for
6 use in” a proceeding before a foreign tribunal; and (3) the application must be made by an “interested
7 person” as related to the underlying foreign proceeding. *See* 28 U.S.C § 1782; *In re: Ex Parte*
8 *Application Varian Med. Sys. Intl. AG*, 16-MC-80048, 2016 WL 1161568, at *3 (N.D. Cal. Mar. 24,
9 2016).

10
11 Once the Court determines that the three threshold requirements are met, the Court may also
12 consider four discretionary factors, known as the *Intel* factors, to determine the appropriateness of
13 ordering discovery, namely, whether: (1) the documents and testimony sought are within the foreign
14 tribunal’s jurisdictional reach and thus accessible absent Section 1782 aid; (2) the foreign court or
15 government would be receptive to U.S. federal-court assistance, in consideration of the nature of
16 the foreign tribunal and the character of the proceedings underway abroad; (3) the Section 1782
17 request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a
18 foreign country or the United States; and (4) the subpoena contains unduly intrusive or burdensome
19 requests. *See Intel*, 542 U.S. at 264-65.
20
21

22 As discussed in further detail below, Mr. Fils’ application satisfies all three threshold
23 requirements, and each discretionary factor weighs in favor of issuing the Subpoenas to the
24 Merchants. The use of Section 1782 to obtain discovery from the Merchants will promote efficiency
25 and transparency in the Latvian Proceedings, and may also encourage the Latvian court to provide
26 reciprocal assistance if the time should arise when a party seeks similar assistance from the Latvian
27
28

1 court. Accordingly, this Court should issue an order permitting the service of the Subpoenas
 2 pursuant to 28 U.S.C. § 1782.

3 **I. Mr. Fils's Application Easily Meets the Threshold Requirements of Section**
 4 **1782.**

5 *First*, the Application meets the initial requirement of Section 1782 because each of the
 6 Merchants "resides or is found in" the Northern District of California. 28 U.S.C. § 1782(a). *See In*
 7 *re Illumina Cambridge Ltd.*, No. 19MC80215, 2019 WL 5811467, at *3 (N.D. Cal. Nov. 7, 2019)
 8 (citing *In re Super Vitaminas, S.A.*, 2017 WL 5571037, at *2 (N.D. Cal. Nov. 20, 2017).
 9

10 Specifically, (1) Specialized Helicopters is physically present in the Northern District of
 11 California, as it is located at 150 Aviation Way, Suite 101, Watsonville, CA; (2) Hyatt "resides or
 12 is found in" the Northern District of California because regularly conducts business in this district
 13 through the Hyatt-branded Hyatt Carmel Highlands that is physically present in the Northern District
 14 of California located at 120 Highlands Drive, Carmel-by-the-Sea, California; (3) Hyatt Carmel
 15 Highlands, also believed to be known as the Highlands Inn, Inc., "resides or is found in" the
 16 Northern District of California because it is physically present in the Northern District of California
 17 based on the hotel that is operated at 120 Highlands Drive, Carmel-by-the-Sea, California; (4) Burst
 18 + Bloom "resides or is found in" the Northern District of California because it maintains offices and
 19 regularly conducts business in this district: it is physically present in the Northern District of
 20 California, as its address is The Crossroads Carmel, 238 Crossroads Blvd, Carmel-By-The-Sea,
 21 California 93923; (5) SommPicks, LLC "resides or is found in" the Northern District of California
 22 because it maintains offices and regularly conducts business in this district: it is physically present
 23 in the Northern District of California, as its address is 440 Talbert Street, Daly City, California,
 24 94014; (6) Benchmark Wine Group, Inc. "resides or is found in" the Northern District of California
 25 because it maintains offices and regularly conducts business in this district: it is physically present
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1 in the Northern District of California, as its address is 445 Devlin Road, Napa, California, 94558;
 2 and (7) Belmont Wine Exchange, LLC, “resides or is found in” the Northern District of California
 3 because it maintains offices and regularly conducts business in this district: it is physically present
 4 in the Northern District of California, as its address is 25811 Clawiter Road, Hayward, California,
 5 94545. (Ashby Decl. ¶¶ 2, 3, 4, 5, 6, 7, 8 & Exs. 1, 2, 3, 6, 8, 10.)

6
 7 Thus, each of the Merchants “resides or is found in” the Court’s jurisdiction. *In re Illumina*
 8 *Cambridge Ltd.*, No. 19-MC-80215, 2019 WL 5811467, at *3 (“[T]he test is . . . satisfied if the
 9 target of the 1782 application has a presence in this District. . . . Thus, there is no question that all
 10 Respondents are ‘found’ here.”).

11
 12 Section 1782 “supports a flexible reading of the phrase ‘resides or is found,’” and one is
 13 “found” within a district if they are served “while physically present in the district of the court that
 14 issued the discovery order...for the purposes of § 1782(a).” *In re Edelman*, 295 F.3d 171, 178–180
 15 (2d Cir. 2002). Further, it is well-settled as a matter of personal jurisdiction that a person is found
 16 wherever they are physically present. *Burnham v. Superior Court of California, Cty. of Marin*, 495
 17 U.S. 604, 610 (1990). Ms. Bernahl’s credit card statement reflects charges by the Merchants, which
 18 are listed on her credit card statement as “SPECIALIZED HELICOPTER,” “HYATT HIGHLAND INN
 19 GIFTSHOP,” “BURST & BLOOM,” “SOMMPICKS,” “BENCHMARK WINE GROUP,” and
 20 “BELMONT WINE EXCHANGE,” in August, September, November, and December 2017, and
 21 February 2018. (Fils Decl. ¶¶ 10–12, Ex. E.)

22
 23 *Second*, the application satisfies the next prong of the Section 1782 analysis because the
 24 requested discovery is “for use in” the Latvian Proceedings, which constitute “foreign proceedings.”
 25 *Intel Corp.*, 542 U.S. at 257-58 (noting that Section 1782 includes conventional civil proceedings
 26 in foreign tribunals); *Akebia Therapeutics, Inc. v. FibroGen, Inc.*, 793 F.3d 1108, 1111 (9th Cir.
 27 2015) (noting that cases heard in “conventional courts,” like the Latvian Proceeding, are within the
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1 ambit of Section 1782's language of a "proceeding in a foreign or international tribunal"). Here,
 2 Mr. Fils intends to use the documents obtained from the Merchants to demonstrate that Ms. Bernahl,
 3 his wife at the time, carried on an extra-marital affair. (Bitans Decl. ¶¶ 10–19.) Such documents will
 4 help Mr. Fils demonstrate that Ms. Bernahl showed gross ingratitude towards Mr. Fils and was the
 5 sole promoter of breakdown of their marriage. Under Latvian law, Ms. Bernahl's (1) gross
 6 ingratitude and (2) her sole role in the breakdown of the marriage each constitute an independent
 7 legal basis for cancellation of the gift agreements between Mr. Fils and Ms. Bernahl. (Bitans Decl.
 8 ¶¶ 8–10.)

10 *Third*, Mr. Fils satisfies the "interested person" requirement of Section 1782. As the *Intel*
 11 Court noted, "[n]o doubt litigants are included among, and may be the most common example of,
 12 the 'interested person[s]' who may invoke § 1782." 542 U.S. at 256. Here, Mr. Fils is a party to the
 13 Latvian Proceedings (the claimant), and he has "a 'reasonable interest' in obtaining judicial
 14 assistance." *Akebia Therapeutics, Inc. v. FibroGen, Inc.*, 793 F.3d at 1110. (See also Fils Decl.
 15 ¶¶ 16–21.) Accordingly, Mr. Fils qualifies as an "interested person" within any fair construction of
 16 that phrase. *See id.*

18 **II. The Discretionary *Intel* Factors Weigh in Favor of Permitting Mr. Fils'** 19 **Application.**

20 Where, as here, the Application meets the statutory requirements of Section 1782, the Court
 21 has broad discretion to grant the Application. *See Akebia Therapeutics, Inc.*, 793 F.3d at 1112. The
 22 "twin aims" of Section 1782, "providing efficient assistance to participants in international litigation
 23 and encouraging foreign countries by example to provide similar means of assistance to our courts,"
 24 suggests that a court should "allow[] . . . liberal discovery." *Advanced Micro Devices, Inc. v. Intel*
 25 *Corp.*, 292 F.3d 664, 669 (9th Cir. 2002), *aff'd*, 542 U.S. 241 (2004). The four discretionary factors
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1 applied by the courts, considered in light of these twin aims, weigh in favor of allowing the
2 Application.

3 First the documents sought are not within the foreign tribunal's jurisdictional reach and thus,
4 are not accessible absent Section 1782 aid. *Intel*, 542 U.S. at 264-65. It would be difficult, and
5 potentially impossible, for Mr. Fils to obtain the requested discovery absent this Court's assistance
6 and approval of the Application. Because none of the Merchants is a participant in the Latvian
7 Proceedings, the Latvian court lacks jurisdiction to compel any of the Merchants to produce the
8 information and documents outlined in the Subpoenas. The Supreme Court noted in *Intel* that when
9 discovery is sought from a participant in the foreign proceeding (unlike any of the Merchants here),
10 the need for Section 1782 aid may not be as apparent as it ordinarily is when evidence is sought
11 from a nonparticipant in the foreign proceeding. *Intel*, 542 U.S. at 264. In contrast, nonparticipants
12 who are outside the foreign tribunal's jurisdictional reach – such as each of the Merchants – may
13 have relevant evidence not obtainable by the tribunal without the aid of Section 1782. *Id.*

14 Here, the interests of fairness and comity favor granting Mr. Fils' application because the
15 Latvian court has no authority to compel a third parties like any of the Merchants to produce the
16 requested materials, as nothing in the Latvian disclosure regime applies extra-territorially to any of
17 the Merchants, or could otherwise be used to obtain disclosure of these documents. The only other
18 potential option to obtain this evidence would be through the Hague Convention on the Taking of
19 Evidence Abroad in Civil or Commercial Matters; however, this route is complex, drawn out, and
20 may ultimately be unsuccessful. Thus, the first of the discretionary factors favors Mr. Fils. *See In*
21 *re Letter Rogatory-Request for Int'l Judicial Assistance From the Harju Country Court in Estonia*
22 *Petition of Lyoness Eesi OÜ*, No. 17-MC-80044, 2017 WL 1436096, at *3 (N.D. Cal. Apr. 24, 2017)
23 (“[E]ntities or persons outside a foreign tribunal's jurisdiction may possess evidence that is
24 unobtainable absent Section 1782 aid.”).

1 *Second*, there is no indication that the Latvian court would be unreceptive to judicial
 2 assistance from a federal court. *In re: Application of Joint Stock Co. Raiffeisenbank*, No. 16-MC-
 3 80203-MEJ, 2016 WL 6474224, at *5 (N.D. Cal. Nov. 2, 2016) (granting the § 1782 petition and
 4 finding that the foreign court procedure at issue did “not prohibit use of evidence obtained in the
 5 course of discovery or disclosure by means of foreign court proceedings”). Indeed, courts are
 6 reluctant to deny a Section 1782 application absent “‘authoritative proof’ that a foreign tribunal
 7 would *reject* evidence obtained with the aid of §1782.” *Id.* (See also Bitans Decl. ¶¶ 15-19 (affirming
 8 that the evidence obtained here would be presented in the Latvian Proceedings).)

10 Put another way, “[a]bsent this type of clear directive, however, a district court’s ruling
 11 should be informed by section 1782’s overarching interest in ‘providing equitable and efficacious
 12 procedures for the benefit of tribunals and litigants involved in litigation and international aspects.’”
 13 *In re: Application of Joint Stock Co. Raiffeisenbank*, No. 16-MC-80203-MEJ, 2016 WL 6474224,
 14 at *5. A district court should not attempt to evaluate the foreign tribunal’s receptiveness. See *Intel*
 15 *Corp.*, 542 U.S. at 261 (“While comity and parity concerns may be important as touchstones for a
 16 district court’s exercise of discretion in particular cases, they do not permit our insertion of a
 17 generally applicable foreign-discoverability rule into the text of § 1782(a).”). Here, because there is
 18 no indication that the Latvian court would be unreceptive to the Court’s assistance, and because the
 19 opposite view—that declarant Agris Bitans affirms that the Latvian Courts would likely find the
 20 evidence useful—the second discretionary factor weighs in favor of Mr. Fils.

23 *Third*, the application is not an attempt to avoid foreign evidence-gathering restrictions, but
 24 instead is a good-faith request to obtain information that will be admissible in the Latvian
 25 Proceedings. This discretionary factor is not about whether the foreign court’s discovery rules
 26 provide a means to access the requested information. See *Intel*, 542 U.S. at 247 (stating that “§ 1782
 27 contains no threshold requirement that evidence sought from a district court would be discoverable
 28

1 under the law governing the foreign proceeding”). Furthermore, the fact that discovery rules under
2 Latvian civil procedure are not identical to the Federal Rules of Civil Procedure does not signify an
3 attempt to circumvent foreign evidence-gathering restrictions. *See id.* at 261 (indicating that while
4 a “foreign nation may limit discovery within its domain” does not “necessarily signal objection to
5 aid from United States federal courts”).

6
7 Here, Mr. Fils is in the unique position to make use of the evidence of the Merchants in the
8 Latvian Proceeding, as he is the claimant in that proceeding. He will have the “practical ability . .
9 .to place a beneficial document . . . before [the] foreign tribunal.” *In re Pioneer Corp. for an Order*
10 *Permitting Issuance of Subpoenas to Take Discovery in a Foreign Proceeding*, No. MC 18-0037,
11 2018 WL 2146412, at *6 (C.D. Cal. May 9, 2018).

12
13 Mr. Fils’ Application is made with the good faith belief that the discovery will lead to
14 evidence that is relevant to the annulment of the gift agreements, proving gross ingratitude of
15 Ms. Bernahl, as well as proving Ms. Bernahl’s sole role in the breakdown of the couple’s marriage
16 that is the subject of the pending Latvian Proceedings. There is nothing pursuant to Latvian law, or
17 to any rule of civil procedure, regulation or statute under Latvian law that prohibits gathering of
18 evidence via § 1782. Accordingly, the third discretionary factor also supports allowing Mr. Fils to
19 serve the Subpoenas upon the Merchants.

20
21 *Fourth*, the discovery Mr. Fils seeks is not “unduly intrusive or burdensome.” *Intel*, 542 U.S.
22 at 265. Mr. Fils, through the application, seeks information for a narrowly tailored timeframe—
23 indeed, over the course of just one month each of August, September, and November 2017, and
24 February 2018, and, in the case of the Hyatt and the Hyatt Carmel Highlands/Highlands Inn, just 45
25 days from December 1, 2017 until January 15, 2018—that is relevant to the Latvian Proceedings.
26 The Subpoenas seek specific information and documents concerning the circumstances of the
27 reservation and stay of Ms. Bernahl at the Hyatt Carmel Highlands/Highlands Inn, the reservation,
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1 leasing, use, and passenger manifests for the helicopter or helicopters that Specialized Helicopters
2 provided and on which Ms. Bernahl and Mr. Bernahl were presumably passengers, and delivery
3 addresses, recipients, and information regarding Ms. Bernahl's order and purchase of extravagant
4 flowers and alcohol – all during the time period when Ms. Bernahl was married to Mr. Fils. These
5 requests are not overly intrusive, but rather, are narrowly tailored to identify documents that are
6 relevant to the Latvian Proceedings, while minimizing the burden on the Merchants.
7

8 **CONCLUSION**

9 For the forgoing reasons, Mr. Olegs Fils respectfully requests that this Court issue an order
10 permitting the service of the Subpoenas attached to the declaration of Joseph R. Ashby as Exhibits
11 11 to 17 pursuant to 28 U.S.C. § 1782.
12

13
14 DATED: October 2, 2020

15 SERGENIAN ASHBY LLP

16
17 By /s/ Joseph R. Ashby

18 Joseph R. Ashby

19 Attorneys for Applicant Olegs Fils
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